

Peter Strojnik, State Bar No. 6464
STROJNIK P.C.
2375 East Camelback Road Suite 600
Phoenix, Arizona 85016
Telephone: (602) 524-6602
ADA@strojnik.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Case No:

FERNANDO GASTELUM,

Plaintiff,

vs.

HPT SUITE PROPERTIES TRUST,

Defendant.

VERIFIED COMPLAINT

- 1. Americans with Disabilities Act**
- 2. Negligence**
- 3. Negligent Misrepresentation**
- 4. Failure to Disclose**
- 5. Fraud / Consumer Fraud**

JURY TRIAL REQUESTED

INTRODUCTION

1. Plaintiff brings this action pursuant to the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.* and corresponding regulations, 28 CFR Part 36 and Department of Justice Standards for Accessible Design (“ADA”).
2. Plaintiff’s left leg is amputated below the knee. Plaintiff moves with the aid of a wheelchair or a prosthetic leg. Plaintiff suffers from a disability as this term is defined in 42 U.S.C. 12102 and 28 CFR §36.105 (c)(1)(i) which includes, inter alia, “walking, standing, sitting, reaching, lifting [and] bending” and other

1 activities. A partial missing limb “substantially limit[s] musculoskeletal
2 function” as a matter of law. 28 CFR § 36.105 (d)(2)(iii)(D).

3 3. Plaintiff is constantly and relentlessly segregated and discriminated against,
4 excluded, denied equal services, or otherwise treated differently than other
5 individuals because of his disability, and has been denied the opportunity to
6 participate in or benefit from services, facilities and opportunities available
7 people without disabilities.
8

9
10 4. Plaintiff incorporates herein Congressional Findings and Purpose set forth in 42
11 U.S.C. §12-101 and 28 CFR §36.101.
12

13 5. Plaintiff is being subjected to discrimination on the basis of disability in
14 violation of Subchapter III of the Americans with Disabilities Act or has
15 reasonable ground to believe that that he is about to be subjected to
16 discrimination in violation of 42 U.S.C. §12183.
17

18 6. Plaintiff alleges that he has actual notice that Defendant has failed to comply
19 with Subchapter III of the ADA, 28 CFR 36 and the 2010 Standards of
20 Accessibility Design (“2010 Standards”) as more fully alleged below.
21

22 7. Plaintiff alleges that he has no obligation to engage in futile gestures as
23 referenced in 42 U.S.C. §12188(A)(1) and 28 C.F.R. Subpart E
24

25 8. Defendant has discriminated against Plaintiff by the following actions and
26 failures to act –
27
28

- a. Failing to make reasonable modifications in policies, practices, or procedures which are necessary to afford Plaintiff and others similarly situated accessibility to Defendant's place of public accommodation, thus violating 42 U.S.C. §12182(b)(2)(A)(ii) and 28 C.F.R. §36.302(a); and
- b. Failing to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, thus violating 42 U.S.C. §12182(b)(2)(A)(iii); and
- c. Failing to remove architectural barriers where such removal is readily achievable, thus violating 42 U.S.C. §12182(b)(2)(A)(iii), 28 CFR 36 and the 2010 Standards..

PARTIES

9. Plaintiff is a disabled person and a committed individual to advance the time when places of public accommodations will be compliant with the ADA. Plaintiff resides in Casa Grande, Arizona.
10. Plaintiff's disability includes the amputation of the left leg below the knee. Plaintiff moves with the use of a wheelchair, walker and/or a prosthetic.
11. Defendant, HPT SUITE PROPERTIES TRUST, D/B/A Hyatt Place Tempe/Phoenix Airport owns and/or operates hotel at 1413 W. Rio Salado Pkwy, Tempe, AZ 85281 which is a public accommodation pursuant to 42

1 U.S.C. § 12181(7)(A) which offers public lodging services *See* 28 CFR §36.104
2 and a listing of public accommodations in 42 U.S.C. §12181(7).

3 **JURISDICTION**

4
5 12.District Court has jurisdiction over this case or controversy by virtue of 28
6 U.S.C. §§ 28-1331 and 42 U.S.C. § 12188 and 28 U.S.C. § 1367.

7
8 13.Plaintiff brings this action as a private attorney general who has been personally
9 subjected to discrimination on the basis of his disability, *see* 42 U.S.C.12188
10 and 28 CFR §36.501.

11 14.Venue is proper pursuant to 28 U.S.C. § 1391.

12 **STANDING TO SUE JURISDICTION**

13
14 15. Plaintiff reviewed 3rd party and 1st party lodging websites to book an
15 ambulatory and wheelchair accessible room. Plaintiff was denied equal
16 opportunity to use and enjoyment of a critical public accommodation through
17 Defendant's acts of discrimination and segregation alleged below.

18
19 16.Plaintiff intends to book a room at the Defendant's hotel once Defendant has
20 removed all accessibility barriers, including the ones not specifically referenced
21 herein, and has fully complied with the ADA.

22
23 17. Because of Defendant's denial of Plaintiff's use and enjoyment of a critical
24 public accommodation through Defendant's acts of discrimination and
25 segregation, he is deterred from visiting that accommodation by accessibility
26 barriers and other violations of the ADA.
27
28

1 18. Defendant has denied Plaintiff -

2 a. The opportunity to participate in or benefit from the goods, services,
3 facilities, privileges, advantages, or accommodations at its hotel.

4 b. The right to be included in the population at large who benefits from
5 Defendant's hotel without being segregated because his disability.
6

7 19. Plaintiff intends to book a room at Defendant's hotel in the future but he will
8 likely suffer repeated injury unless and until the barriers of accessibility and
9 ambulatory and wheelchair accessibility barriers have been removed.
10

11 **CONTINUING JURISDICTION**

12 20. ADA violations which form the subject matter of this Verified Complaint
13 change frequently due to regular maintenance, remodels, repairs, and normal
14 wear and tear.
15

16 21. Defendant's ADA Violations are of the type that can reasonably be expected to
17 start up again, allowing Defendant to be free to return to the old ways' after the
18 threat of a lawsuit had passed.
19

20 22. If one or more ADA violation are cured, Plaintiff alleges that they were cured
21 and timed to anticipate the current lawsuit, and not as a good faith effort to
22 comply with the ADA.
23

24 23. To remedy the violations of 28 CFR 36.302(e), Defendant would be required
25 not only to modify all 1st and 3rd party lodging websites, but would be required
26 to do so truthfully and accurately.
27
28

COUNT ONE

Violation of Plaintiff's Civil Rights under the ADA

24. Plaintiff realleges all allegations heretofore set forth.

25. By virtue of his disability, Plaintiff requires an ADA compliant lodging facility particularly applicable to his mobility, both ambulatory and wheelchair assisted.

26. On or about January 31, 2018 Plaintiff intended to visit Phoenix and spend the night there. He visited a 3rd party website www.expedia.com to book a room.

27. 3rd party website disclosed general availability and description of Defendant's hotel.

28. 3rd party website failed to identify and describe mobility related accessibility features and guest rooms offered through its reservations service in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's hotel meets his accessibility needs.

29. 3rd party website did state: "Accessibility If you have requests for specific accessibility needs, please note them at check-out when you book your room.

- Accessible bathroom
- Roll-in shower"

30. 3rd party website failed to disclose the following accessibility features in enough detail to reasonably permit Plaintiff to assess independently whether Defendant's hotel and guest rooms meets his accessibility needs:

- a. Whether accessible routes comply with § 206 of the 2010 Standards; and
- b. Whether operable parts on accessible elements, accessible routes and accessible rooms comply with §§205 and 803 of the 2010 Standards; and
- c. Whether any accessible means of egress comply with §207 of the 2010 Standards.
- d. Whether parking spaces comply with §§208 and 502 of the 2010 Standards; and
- e. Whether passenger loading zones comply with §§209 and 503 of the 2010 Standards; and
- f. Whether any drinking fountains comply with §211 of the 2010 Standards; and
- g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804 of the 2010 Standards; and
- h. Whether toilet facilities and bathing facilities comply with §213 of the 2010 Standards; and
- i. Whether any washing machines and clothes dryers comply with §§214 and 611 of the 2010 Standards; and
- j. Whether accessible hotel rooms comply with §224 of the 2010 Standards; and
- k. Whether dining surfaces and work surfaces comply with §§226 and 902 of the 2010 Standards; and

- 1 l. Whether sales and service elements comply with §227 of the 2010
- 2 Standards; and
- 3 m. Whether any saunas and steam rooms comply with §§241 and 612 of the
- 4 2010 Standards; and
- 5
- 6 n. Whether any swimming pools, wading pools and spas comply with
- 7 §§242 and 1009 of the 2010 Standards; and
- 8
- 9 o. Whether floor and ground surfaces comply with §302 of the 2010
- 10 Standards; and
- 11
- 12 p. Whether changes in level comply with §303 of the 2010 Standards; and
- 13
- 14 q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- 15
- 16 r. Whether floor and ground spaces comply with §305 of the 2010
- 17 Standards; and
- 18
- 19 s. Whether knee and toes clearances comply with §306 of the 2010
- 20 Standards; and
- 21
- 22 t. Whether protruding objects comply with §307 of the 2010 Standards; and
- 23
- 24 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 25
- 26 v. Whether the operating parts on accessible features comply with §309 of
- 27 the 2010 Standards; and
- 28
- 29
- 30 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 31
- 32 x. Whether walking surfaces comply with §403 of the 2010 Standards; and

1 y. Whether doors, doorways and gates comply with §404 of the 2010
2 Standards; and

3 z. Whether ramps comply with § 405 of the 2010 Standards; and

4 aa. Whether curb ramps comply with §406 of the 2010 Standards; and

5 bb. Whether any elevators comply with §407 of the 2010 Standards; and

6 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and

7 dd. Whether any stairways comply with §504 of the 2010 Standards; and

8 ee. Whether handrails on elements requiring handrails comply with §505 of
9 the 2010 Standards; and

10 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010

11 Standards with respect to all the following subchapters of Chapter 6: §§

12 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water

13 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),

14 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats

15 in bathtubs and shower compartments), and

16 gg. Whether service counters comply with 904 of the 2010 Standards.

17 31. Thereafter, Plaintiff consulted Defendant's 1st party website
18 www.phoenixairport.place.hyatt.com to determine the information unavailable
19 from the third-party website.

20 32. 1st party website failed to identify and describe mobility related accessibility
21 features and guest rooms offered through its reservations service in enough
22

1 detail to reasonably permit Plaintiff to assess independently whether
2 Defendant's hotel meets his accessibility needs.

3 33. In particular, 1st party website failed to disclose the following accessibility
4 features in enough detail to reasonably permit Plaintiff to assess independently
5 whether Defendant's hotel and guest rooms meets his accessibility needs:
6

- 7 a. Whether accessible routes comply with § 206 of the 2010 Standards; and
8
9 b. Whether operable parts on accessible elements, accessible routes and
10 accessible rooms comply with §§205 and 803 of the 2010 Standards; and
11
12 c. Whether any accessible means of egress comply with §207 of the 2010
13 Standards.
14
15 d. Whether parking spaces comply with §§208 and 502 of the 2010
16 Standards; and
17
18 e. Whether passenger loading zones comply with §§209 and 503 of the
19 2010 Standards; and
20
21 f. Whether any drinking fountains comply with §211 of the 2010 Standards;
22 and
23
24 g. Whether any kitchens, kitchenettes and sinks comply with §§212 and 804
25 of the 2010 Standards; and
26
27 h. Whether toilet facilities and bathing facilities comply with §213 of the
28 2010 Standards; and

- i. Whether any washing machines and clothes dryers comply with §§214 and 611 of the 2010 Standards; and
- j. Whether accessible hotel rooms comply with §224 of the 2010 Standards; and
- k. Whether dining surfaces and work surfaces comply with §§226 and 902 of the 2010 Standards; and
- l. Whether sales and service elements comply with §227 of the 2010 Standards; and
- m. Whether any saunas and steam rooms comply with §§241 and 612 of the 2010 Standards; and
- n. Whether any swimming pools, wading pools and spas comply with §§242 and 1009 of the 2010 Standards; and
- o. Whether floor and ground surfaces comply with §302 of the 2010 Standards; and
- p. Whether changes in level comply with §303 of the 2010 Standards; and
- q. Whether turning spaces comply with § 304 of the 2010 Standards; and
- r. Whether floor and ground spaces comply with §305 of the 2010 Standards; and
- s. Whether knee and toes clearances comply with §306 of the 2010 Standards; and
- t. Whether protruding objects comply with §307 of the 2010 Standards; and

- 1 u. Whether the reach ranges comply with §308 of the 2010 Standards; and
- 2 v. Whether the operating parts on accessible features comply with §309 of
- 3 the 2010 Standards; and
- 4
- 5 w. Whether accessible routes comply with §402 of the 2010 Standards; and
- 6 x. Whether walking surfaces comply with §403 of the 2010 Standards; and
- 7 y. Whether doors, doorways and gates comply with §404 of the 2010
- 8 Standards; and
- 9
- 10 z. Whether ramps comply with § 405 of the 2010 Standards; and
- 11
- 12 aa. Whether curb ramps comply with §406 of the 2010 Standards; and
- 13 bb. Whether any elevators comply with §407 of the 2010 Standards; and
- 14 cc. Whether any platform lifts comply with §410 of the 2010 Standards; and
- 15 dd. Whether any stairways comply with §504 of the 2010 Standards; and
- 16
- 17 ee. Whether handrails on elements requiring handrails comply with §505 of
- 18 the 2010 Standards; and
- 19
- 20 ff. Whether the plumbing facilities comply with Chapter 6 of the 2010
- 21 Standards with respect to all the following subchapters of Chapter 6: §§
- 22 602 (drinking fountains), 603 (toilets and bathing rooms), 604 (water
- 23 closets and toilet compartments, 605 (urinals), 606 (lavatories and sinks),
- 24 607 (bathtubs), 607 (shower compartments), 608 (grab bars), 610 (seats
- 25 in bathtubs and shower compartments), and
- 26
- 27 gg. Whether service counters comply with 904 of the 2010 Standards.
- 28

1 34. Thereafter Plaintiff called Defendant's hotel to inquire whether it was
2 compliant with the ADA and suitable for Plaintiff's accessibility needs.

3 35. Plaintiff spoke with hotel reservations clerk, Holly. Plaintiff specifically
4 inquired whether Defendant's hotel was compliant with the Americans with
5 Disabilities Act and compliant with the specific requirements of accessibility.
6

7 36. Reservations clerk responded that the hotel was compliant with the Americans
8 with Disabilities Act.
9

10 37. Plaintiff did call back and speak with Carrie regarding the hotel's shuttle to the
11 airport, she confirmed that the airport shuttle was not wheelchair accessible.
12

13 38. Plaintiff subsequently visited the hotel to independently verify that it was, at
14 least on the outside, suitable to accommodate his disability.

15 39. Plaintiff noted that the hotel was not compliant with the ADA and was replete
16 with accessibility barriers in the details which include, without limitation, the
17 following areas of non-compliance:
18

19 a. **208.3.1.** The accessible parking spaces are not dispersed to all accessible
20 entrances.
21

22 b. **502.2.** Both van accessible parking spaces have a width less than the
23 required minimum of 132 inches.
24

25 c. **502.3.1.** Multiple access aisles have a width less than the required minimum
26 of 60 inches.
27
28

- d. **502.6.** Multiple signs used to mark accessible parking spaces are lower than the required minimum of 60 inches.
- e. **303.2.** At least one accessible route has a change in level greater than 1/4 inch vertically.
- f. **309.4.** The lobby restroom door requires more than 5 pounds of force to open.
- g. **309.4.** The pool gate requires a twisting of the wrist motion to open.
- h. **403.3.** Multiple accessible routes have walking surfaces cross sloped steeper than 1:48 inches.
- i. **405.2.** Multiple ramps and curb ramps have a running slope steeper than 1:12 inches.
- j. **405.3.** At least two curb ramps have a cross slope steeper than 1:48 inches.
- k. **503.3.** The passenger loading zone does not have an access aisle that adjoins an accessible route.
- l. **604.7.** The toilet paper dispenser for the lobby restroom accessible water closet is less than the required minimum of 7 inches in front of the water closet; and
- m. Other ADA violations to be discovered through a discovery process.

40. As a result of the deficiencies described above, Plaintiff declined to book a room at the hotel.

41. The removal of accessibility barriers listed above is readily achievable.

1 42. As a direct and proximate result of ADA Violations, Defendant's failure to
2 remove accessibility barriers prevented Plaintiff from equal access to the
3 Defendant's public accommodation.
4

5 **WHEREFORE**, Plaintiff prays for all relief as follows:

6 A. Relief described in 42 U.S.C. §2000a – 3; and

7 B. Relief described in 42 U.S.C. § 12188(a) and (b) and, particularly -

8 C. Injunctive relief order to alter Defendant's place of public
9 accommodation to make it readily accessible to and usable by ALL
10 individuals with disabilities; and
11

12 D. Requiring the provision of an auxiliary aid or service, modification of a
13 policy, or provision of alternative methods, to the extent required by
14 Subchapter III of the ADA; and
15

16 E. Equitable nominal damages in the amount of \$1.00; and

17 F. For costs, expenses and attorney's fees; and

18 G. All remedies provided for in 28 C.F.R. 36.501(a) and (b).
19
20
21

22 **COUNT TWO**
23 Negligence

24 43. Plaintiff realleges all allegations heretofore set forth.

25 44. Defendant had a duty to Plaintiff to remove ADA accessibility barriers so that
26 Plaintiff as a disabled individual would have full and equal access to the public
27 accommodation.
28

1 45. Defendant breached this duty.

2 46. Defendant is or should be aware that, historically, society has tended to isolate
3 and segregate individuals with disabilities, and, despite some improvements,
4 such forms of discrimination against individuals with disabilities continue to be
5 a serious and pervasive social problem¹.
6

7 47. Defendant knowingly and intentionally participated in this historical
8 discrimination against Plaintiff, causing Plaintiff damage.
9

10 48. Discrimination against individuals with disabilities persists in the use and
11 enjoyment of critical public accommodations².
12

13 49. Defendant's knowing and intentional persistence in discrimination against
14 Plaintiff is alleged, causing Plaintiff damage.
15

16 50. Individuals with disabilities, including Plaintiff, continually encounter various
17 forms of discrimination, including outright intentional exclusion, the
18 discriminatory effects of architectural, overprotective rules and policies, failure
19 to make modifications to existing facilities and practices, exclusionary
20 qualification standards and criteria, segregation, and relegation to lesser
21 services, programs, activities, benefits, jobs, or other opportunities³.
22
23
24
25

26 ¹ 42 U.S.C. § 12101(a)(2)

27 ² 42 U.S.C. § 12101(a)(3)

28 ³ 42 U.S.C. § 12101(a)(5)

1 51. Defendant's knowing and intentional discrimination against Plaintiff reinforces
2 above forms of discrimination, causing Plaintiff damage.

3 52. Census data, national polls, and other studies have documented that people
4 with disabilities, as a group, occupy an inferior status in our society, and are
5 severely disadvantaged socially, vocationally, economically, and
6 educationally⁴.
7

8 53. Defendant's knowing and intentional discrimination has relegated Plaintiff to
9 an inferior status in society, causing Plaintiff damage.
10

11 54. The Nation's proper goals regarding individuals with disabilities are to assure
12 equality of opportunity, full participation, independent living, and economic
13 self-sufficiency for such individuals⁵.
14

15 55. Defendant's knowing and intentional discrimination has worked counter to our
16 Nation's goals of equality, causing Plaintiff damage.
17

18 56. Continued existence of unfair and unnecessary discrimination and prejudice
19 denies people with disabilities the opportunity to compete on an equal basis and
20 to pursue those opportunities for which our free society is justifiably famous,
21 and costs the United States billions of dollars in unnecessary expenses resulting
22 from dependency and nonproductivity⁶.
23
24

25
26 ⁴ 42 U.S.C. §12101(a)(6)

27 ⁵ 42 U.S.C. §12101(a)(7)

28 ⁶ 42 U.S.C. §12101(a)(8)

1 57. Defendant's knowing and intentional unfair and unnecessary discrimination
2 against Plaintiff demonstrates Defendant's knowing and intentional damage to
3 Plaintiff.
4

5 58. Defendant's breach of duty caused Plaintiff damages including, without
6 limitation, the feeling of segregation, discrimination, relegation to second class
7 citizen status the pain, suffering and emotional damages inherent to
8 discrimination and segregation and other damages to be proven at trial.
9

10 59. By violating Plaintiff's civil rights, Defendant engaged in intentional,
11 aggravated and outrageous conduct.
12

13 60. The ADA has been the law of the land since 1991, but Defendant engaged in a
14 conscious action of a reprehensible character, that is, Defendant denied Plaintiff
15 his civil rights, and cause him damage by virtue of segregation, discrimination,
16 relegation to second class citizen status the pain, suffering and emotional
17 damages inherent to discrimination and segregation and other damages to be
18 proven at trial
19
20

21 61. Defendant either intended to cause injury to Plaintiff or defendant consciously
22 pursued a course of conduct knowing that it created a substantial risk of
23 significant harm to Plaintiff.
24

25 62. Defendant is liable to Plaintiff for punitive damages in an amount to be proven
26 at trial sufficient, however, to deter this Defendant and others similarly situated
27 from pursuing similar acts.
28

1 **WHEREFORE**, Plaintiff prays for relief as follows:

2 A. For finding of negligence; and

3 B. For damages in an amount to be proven at trial; and

4 C. For punitive damages to be proven at trial; and

5 D. For such other and further relief as the Court may deem just and proper.

6
7
8 **COUNT THREE**
9 Negligent Misrepresentation

10 63. Plaintiff realleges all allegations heretofore set forth.

11
12 64. Defendant failed to exercise reasonable care or competence in obtaining or
13 communicating the information regarding ADA compliance to Plaintiff both on
14 the websites and telephonically.

15
16 65. Defendant hotel supplied false information to Plaintiff for guidance in
17 Plaintiff's business transaction, to wit: the renting of a hotel room.

18 66. Defendant's false statement was made in the course of Defendant's business in
19 which Defendant has a pecuniary interest, to wit: renting of rooms.

20 67. Plaintiff justifiably relied on Defendant's false information.

21
22 68. Plaintiff has suffered pecuniary losses as a result of his reliance on Defendant's
23 false information regarding ADA compliance, to wit: he spent time, effort and
24 resources.
25
26
27
28

1 69. Defendant either intended to cause injury to Plaintiff or defendant consciously
2 pursued a course of conduct knowing that it created a substantial risk of
3 significant harm to Plaintiff.
4

5 70. Defendant is liable to Plaintiff for punitive damages in an amount to be proven
6 at trial sufficient, however, to deter this Defendant and others similarly situated
7 from pursuing similar acts.
8

9 **WHEREFORE**, Plaintiff prays for relief as follows:

10 A. For finding of negligent misrepresentation; and

11 B. For damages in an amount to be proven at trial; and

12 C. For punitive damages to be proven at trial; and

13 D. For such other and further relief as the Court may deem just and proper.
14
15

16 **COUNT FOUR**
17 Failure to Disclose

18 71. Plaintiff realleges all allegations heretofore set forth.
19

20 72. Defendant was under a duty to Plaintiff to exercise reasonable care to disclose
21 matters required to be disclosed pursuant to 28 CFR 36.302(e) as more fully
22 alleged above.
23

24 73. Defendant was under a duty to disclose matters to Plaintiff that Defendant knew
25 were necessary to be disclosed to prevent Plaintiff to be misled by partial
26 disclosures of ADA compliance as more fully alleged above.
27

28 74. The compliance with the ADA is a fact basic to the transaction.

1 75. Defendant failed to make the necessary disclosures.

2 76. As a direct consequence of Defendant's failure to disclose, Plaintiff visited the
3 hotel, but did not book a room because of its non-compliance with the ADA.
4

5 77. Plaintiff has been damaged by Defendant's non-disclosure.

6 78. Defendant either intended to cause injury to Plaintiff or defendant consciously
7 pursued a course of conduct knowing that it created a substantial risk of
8 significant harm to Plaintiff.
9

10 79. Defendant is liable to Plaintiff for punitive damages in an amount to be proven
11 at trial sufficient, however, to deter this Defendant and others similarly situated
12 from pursuing similar acts.
13

14 **WHEREFORE**, Plaintiff prays for relief as follows:

15 A. For finding of that Defendant failed to disclose information; and

16 B. For damages in an amount to be proven at trial; and

17 C. For punitive damages to be proven at trial; and

18 D. For such other and further relief as the Court may deem just and proper.
19
20
21

22 **COUNT FIVE**

23 Fraud

24 Common Law and Consumer

25 80. Plaintiff realleges all allegations heretofore set forth.

26 81. Defendant made a representation as alleged above.

27 82. The representation was material.
28

1 83.The representation was false.

2 84.Defendant knew that the representation was false or was ignorant to the truth or
3 falsity thereof.
4

5 85.Defendant intended that Plaintiff rely on the false representation.

6 86.Plaintiff reasonably relied on the misrepresentation.

7 87.Plaintiff has a right to rely on the misrepresentation.

8
9 88.Plaintiff was consequently and proximately damaged by Defendant's
10 misrepresentation.

11 89.Defendant's misrepresentation was made in connection with the sale or
12 advertisement of merchandise with the intent that Plaintiff rely on it.
13

14 90.Renting of hotel rooms is "merchandise" as this term is defined in A.R.S. §44-
15 1521(5).
16

17 91. Plaintiff relied on the misrepresentation.

18 92.Plaintiff suffered an injury resulting from the false misrepresentation

19 93.Defendant either intended to cause injury to Plaintiff or defendant consciously
20 pursued a course of conduct knowing that it created a substantial risk of
21 significant harm to Plaintiff.
22

23 94.Defendant is liable to Plaintiff for punitive damages in an amount to be proven
24 at trial sufficient, however, to deter this Defendant and others similarly situated
25 from pursuing similar acts.
26

27 **WHEREFORE**, Plaintiff prays for relief as follows:
28

- 1 A. For finding of that Defendant failed to disclose information; and
2 B. For damages in an amount to be proven at trial; and
3 C. For punitive damages to be proven at trial; and
4
5 D. For such other and further relief as the Court may deem just and proper.

6 **REQUEST FOR TRIAL BY JURY**

7 Plaintiff respectfully requests a trial by jury in issues triable by a jury.

8
9 RESPECTFULLY SUBMITTED this 3rd day of February, 2018.

10 **STROJNIK, P.C.**

11 

12 _____
13 Peter Strojnik, 6464
14 Attorneys for Plaintiff

15 **VERIFICATION**

16 Plaintiff verifies that he has read the forgoing and that the factual allegations stated above
17 are true and correct to the best of his knowledge, information and belief. Plaintiff makes
18 this verification under the penalty of perjury.

19 /s/ Fernando Gastelum
20 Authorized Electronically
21
22
23
24
25
26
27
28